

STATE OF MICHIGAN
COURT OF APPEALS

HOME LOAN CORPORATION,

Plaintiff/Counter-Defendant-
Appellee,

v

PANAGIOTIS PANOUSOPOULOS,

Defendant,

and

PANAGIOTIS PANOUSOPOULOS, JR., a/k/a
PETE PANOUSOPOULOS,

Defendant/Counter-Plaintiff/Cross-
Plaintiff,

and

JOUMANA FAWAZ and HASSAN FAWAZ,

Defendants-Cross-Defendants,

and

SEBASTIAN RESTUM,

Defendant-Appellant.

Before: Whitbeck, C.J., and White and Zahra, JJ.

PER CURIAM.

Defendant Sebastian Restum appeals as of right from a default judgment awarding plaintiff \$163,601.18. We affirm.

Plaintiff filed a multi-count complaint seeking to quiet title to disputed property and requesting money damages in connection with an alleged fraudulent mortgage transaction.

Defendant Restum did not respond to the complaint and a default was entered against him. When plaintiff later moved to enter a default judgment, Restum filed a motion to set aside the default and submitted four affidavits in support of his claims that there was good cause for his failure to respond to the complaint (i.e., he believed the action was merely one to quiet title and did not involve a request for money damages) and that he had a meritorious defense (i.e., he was not involved in the underlying mortgage transaction). After plaintiff submitted affidavits and documentary evidence contradicting allegations in Restum's affidavits, the circuit court conducted an evidentiary hearing. Following the hearing, it determined that Restum had not shown either good cause for failing to respond to plaintiff's complaint or a meritorious defense. Accordingly, it denied Restum's motion to set aside the default and entered a default judgment in favor of plaintiff.

A circuit court's decision whether to set aside a default is reviewed for an abuse of discretion. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). "Although defaults are not favored, neither is setting aside defaults." *Id.* at 15. MCR 2.603(D)(1) provides that "a motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." "Good cause" includes a substantial defect or irregularity in the proceedings upon which the default was based, or a reasonable excuse for failure to comply with the requirements that created the default. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999).

Restum argues that the default judgment should be vacated and the default set aside because he established good cause for failing to file a timely answer to the complaint, and the circuit court erred by looking beyond the face of his affidavits and conducting an evidentiary hearing to determine whether he established a meritorious defense. We disagree.

Initially, we note that Restum never objected to the circuit court's decision to conduct an evidentiary hearing. In any event, the circuit court had before it both plaintiff's motion to enter a default judgment and Restum's motion to set aside the default. Restum does not dispute that the court could properly hold an evidentiary hearing to determine whether Restum had good cause for failing to answer the complaint, and to establish the nature and amount of the default judgment the court would enter were it to decide to deny Restum's motion to set aside the default.¹ Rather, Restum asserts that his showing of good cause was adequate in light of his affidavits, which established an absolute defense on the merits, and that the affidavits should have been taken at face value.

We need not address whether the circuit court properly took testimony and made findings on the underlying issue of liability because we conclude that the court did not abuse its discretion

¹ MCR 2.603(B)(3)(b)(iii) provides that when considering a motion to enter a default judgment, if it is necessary to "establish the truth of an allegation by evidence," the court may "conduct hearings or order references it deems necessary and proper."

in finding that Restum did not establish good cause for his failure to file a timely answer. The circuit court rejected Restum's claim that he reasonably believed that the action sought only to quiet title and did not concern him because he had no involvement in the underlying mortgage transaction. As the circuit court observed, plaintiff's complaint clearly identified Restum as a defendant to the action and, although Count I sought to quiet title to the disputed property, seven other counts requested money damages. We further observe that Restum sought legal advice after the time to answer had expired, and after speaking directly to the lawyer handling the case for plaintiff, Reed, who recommended that he seek legal counsel. Both the attorney with whom Restum consulted, Mouchet, and the attorney in Reed's office with whom Mouchet spoke, Bernardi, testified that Bernardi informed Mouchet that it was not his case and Mouchet should speak with the attorney handling the case. Mouchet never spoke with Reed because Restum did not pay the retainer necessary to engage him,² and Restum never returned to Mouchet's office to pick up the complaint, which he had left with Mouchet.

The gist of the court's findings was that although Restum was told that this was a quiet title case, he was never told that it did not also involve a claim for damages, and given his master's degree and experience, he should have known that a claim for damages was involved and he needed to act to defend himself. We conclude that the circuit court did not abuse its discretion in finding that Restum did not have good cause for failing to answer the complaint. Therefore, the circuit court did not err in declining to set aside the default and entering the default judgment against Restum.

Affirmed.³

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Brian K. Zahra

² Mouchet explained that Restum had a balance due from Mouchet's services regarding a different matter, and so Mouchet required a retainer in order to represent Restum in the instant case.

³ In light of our decision to affirm, it is unnecessary to address Restum's claim that this case should be reassigned to a different judge.